

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JOHN MAXWELL MONTIN,)	CASE NO. 4:07CV3271
)	
Plaintiff,)	
)	
vs.)	ORDER DISMISSING PARTY
)	
BILL GIBSON and CHRISTINE)	
PETERSON,)	
)	
Defendants.)	

This matter comes before the Court on a motion by John Montin, pursuant to Fed.R.Civ.P. 41(a)(2). Montin seeks to dismiss Christine Peterson as a party to this action. Plaintiff alleges that Ms. Peterson has retired and is no longer employed as CEO of the Department of Health and Human Services and therefore cannot provide any relief to him. Ms. Peterson was served in her official capacity only. Plaintiff's counsel reports that he has discussed the motion to dismiss Ms. Peterson with her attorney in the Nebraska Attorney General's office and that Mr. Rumbaugh indicated that he does not oppose the motion. Plaintiff believes this leaves only Bill Gibson, sued in his official capacity only as the sole remaining defendant.

The Court finds this motion should be and hereby is sustained.
Christine Peterson is dismissed as a defendant in this lawsuit.

John Montin, by and through his attorney, also gave notice that his prayer for relief in his amended complaint should be considered narrowed to specifically seek only:

1. A declaratory judgment that Plaintiff earned a vested, constitutionally based, substantive due process right to take therapeutic, unsupervised walks about the grounds of the Lincoln Regional Center.

2. A declaratory judgment that he possesses a constitutionally based and based on Nebraska statute substantive due process right to the least restrictive treatment, which would include therapeutic, unsupervised walks about the grounds of the Lincoln Regional Center.

3. A declaratory judgment that he possesses a constitutionally based, substantive due process right to have his treatment team and his treating psychiatrist consider the medical decision of whether he should be eligible to take therapeutic, unsupervised walks on the grounds of the Lincoln Regional Center.

4. An injunction authorizing his treatment team and his treating psychiatrist to make appropriate recommendations concerning the unsupervised, therapeutic walks to the Hayes County District Court.

Montin, by and through his counsel, informed the Court that Montin no longer believes that there is any basis for seeking money damages and

that he waives and gives up any such claim in this suit. This notice does not require any action by the Court. However, the Court notes that this notice does not limit which issues may be addressed by Defendant Bill Gibson whatsoever.

1/11/2012

Date

/s/ Cheryl Zwart

Cheryl Zwart

United States Magistrate Judge